

AMENDED IN ASSEMBLY MAY 9, 2005

AMENDED IN ASSEMBLY MAY 2, 2005

AMENDED IN ASSEMBLY APRIL 28, 2005

AMENDED IN ASSEMBLY APRIL 25, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

## ASSEMBLY BILL

**No. 521**

**Introduced by Assembly Member Sharon Runner**

February 16, 2005

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An act to amend Section 1872.83 of the Insurance Code, ~~and to amend Sections 3820 and 3822 of, and to repeal Section 62.6 of, the Labor Code,~~ relating to workers' compensation.

### LEGISLATIVE COUNSEL'S DIGEST

AB 521, as amended, Sharon Runner. Workers' compensation: ~~Fraud Assessment Commission~~ *fraud: grants.*

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law requires the Director of Industrial Relations to levy and collect assessments from employers that are deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is only expended, upon appropriation by the Legislature, for the investigation and prosecution of workers' compensation fraud and the willful failure to secure payment of workers' compensation. ~~Existing law establishes the Fraud Assessment Commission, composed of 7 appointed members, to determine the aggregate amount of this assessment. Existing law requires that a certain percentage of the~~

*funds in this account be distributed to district attorneys for those purposes, and requires each district attorney seeking a portion of the funds to submit to the Insurance Commissioner an application, as specified.*

~~This bill would eliminate the commission and would repeal the requirement that an assessment for workers' compensation fraud be levied by the director. It would also make various technical and conforming changes~~ *require that a grant to a district attorney under these provisions be awarded on the basis of a single application for a period of three years.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 1872.83 of the Insurance Code is*  
2     *amended to read:*

3     1872.83. (a) The commissioner shall ensure that the Bureau  
4     of Fraudulent Claims aggressively pursues all reported incidents  
5     of probable workers' compensation fraud, as defined in Sections  
6     11760 and 11880, in subdivision (a) of Section 1871.4, and in  
7     Section 549 of the Penal Code, and forwards to the appropriate  
8     disciplinary body the names, along with all supporting evidence,  
9     of any individuals licensed under the Business and Professions  
10    Code who are suspected of actively engaging in fraudulent  
11    activity. The Bureau of Fraudulent Claims shall forward to the  
12    Insurance Commissioner or the Director of Industrial Relations,  
13    as appropriate, the name, along with all supporting evidence, of  
14    any insurer, as defined in subdivision (c) of Section 1877.1,  
15    suspected of actively engaging in the fraudulent denial of claims.

16    (b) To fund increased investigation and prosecution of  
17    workers' compensation fraud, and of willful failure to secure  
18    payment of workers' compensation, in violation of Section  
19    3700.5 of the Labor Code, there shall be an annual assessment as  
20    follows:

21    (1) The aggregate amount of the assessment shall be  
22    determined by the Fraud Assessment Commission, which is  
23    hereby established. The commission shall be composed of seven  
24    members consisting of two representatives of organized labor,  
25    two representatives of self-insured employers, one representative

1 of insured employers, one representative of workers'  
2 compensation insurers, and the President of the State  
3 Compensation Insurance Fund, or his or her designee.

4 The Governor shall appoint members representing organized  
5 labor, self-insured employers, insured employers, and insurers.  
6 The term of office of members of the commission shall be four  
7 years, and a member shall hold office until the appointment of a  
8 successor. The President of the State Compensation Insurance  
9 Fund shall be an ex officio, voting member of the commission.  
10 Members of the commission shall receive one hundred dollars  
11 (\$100) for each day of actual attendance at commission meetings  
12 and other official commission business, and shall also receive  
13 their actual and necessary traveling expenses incurred in the  
14 performance of commission duties. Payment of per diem and  
15 travel expenses shall be made from the Workers' Compensation  
16 Fraud Account in the Insurance Fund, established in paragraph  
17 (4), upon appropriation by the Legislature.

18 (2) In determining the aggregate amount of the assessment, the  
19 Fraud Assessment Commission shall consider the advice and  
20 recommendations of the Bureau of Fraudulent Claims and the  
21 commissioner.

22 (3) The aggregate amount of the assessment shall be collected  
23 by the Director of Industrial Relations pursuant to Section 62.6 of  
24 the Labor Code. The Fraud Assessment Commission shall  
25 annually advise the Director of Industrial Relations, not later than  
26 March 15, of the aggregate amount to be assessed for the next  
27 fiscal year.

28 (4) The amount collected, together with the fines collected for  
29 violations of the unlawful acts specified in Sections 1871.4,  
30 11760, and 11880, Section 3700.5 of the Labor Code, and  
31 Section 549 of the Penal Code, shall be deposited in the  
32 Workers' Compensation Fraud Account in the Insurance Fund,  
33 which is hereby created, and may be used, upon appropriation by  
34 the Legislature, only for enhanced investigation and prosecution  
35 of workers' compensation fraud and of willful failure to secure  
36 payment of workers' compensation as provided in this section.

37 (c) For each fiscal year, the total amount of revenues derived  
38 from the assessment pursuant to subdivision (b) shall, together  
39 with amounts collected pursuant to fines imposed for unlawful  
40 acts described in Sections 1871.4, 11760, and 11880, Section

1 3700.5 of the Labor Code, and Section 549 of the Penal Code,  
2 not be less than three million dollars (\$3,000,000). Any funds  
3 appropriated by the Legislature pursuant to subdivision (b) that  
4 are not expended in the fiscal year for which they have been  
5 appropriated, and that have not been allocated under subdivision  
6 (f), shall be applied to satisfy for the immediately following  
7 fiscal year the minimum total amount required by this  
8 subdivision. In no case may that money be transferred to the  
9 General Fund.

10 (d) After incidental expenses, at least 40 percent of the funds  
11 to be used for the purposes of this section shall be provided to the  
12 Bureau of Fraudulent Claims of the Department of Insurance for  
13 enhanced investigative efforts, and at least 40 percent of the  
14 funds shall be distributed to district attorneys, pursuant to a  
15 determination by the commissioner with the advice and consent  
16 of the bureau and the Fraud Assessment Commission, as to the  
17 most effective distribution of moneys for purposes of the  
18 investigation and prosecution of workers' compensation fraud  
19 cases and cases relating to the willful failure to secure the  
20 payment of workers' compensation. Each district attorney  
21 seeking a portion of the funds shall submit to the commissioner  
22 an application setting forth in detail the proposed use of any  
23 funds provided. A district attorney receiving funds pursuant to  
24 this subdivision shall submit an annual report to the  
25 commissioner with respect to the success of his or her efforts.  
26 Upon receipt, the commissioner shall provide copies to the  
27 bureau and the Fraud Assessment Commission of any  
28 application, annual report, or other documents with respect to the  
29 allocation of money pursuant to this subdivision. Both the  
30 application for moneys and the distribution of moneys shall be  
31 public documents. Information submitted to the commissioner  
32 pursuant to this section concerning criminal investigations,  
33 whether active or inactive, shall be confidential. *A grant under*  
34 *this subdivision shall be awarded on the basis of a single*  
35 *application for a period of three years.*

36 (e) If a district attorney is determined by the commissioner to  
37 be unable or unwilling to investigate and prosecute workers'  
38 compensation fraud claims or claims relating to the willful failure  
39 to secure the payment of workers' compensation, the  
40 commissioner shall discontinue distribution of funds allocated for

1 that county and may redistribute those funds according to this  
2 subdivision.

3 (1) The commissioner shall promptly determine whether any  
4 other county could assert jurisdiction to prosecute the fraud  
5 claims or claims relating to the willful failure to secure the  
6 payment of workers' compensation that would have been brought  
7 in the nonparticipating county, and if so, the commissioner may  
8 award funds to conduct the prosecutions redirected pursuant to  
9 this subdivision. These funds may be in addition to any other  
10 fraud prosecution funds or claims relating to the willful failure to  
11 secure the payment of workers' compensation prosecution  
12 otherwise awarded under this section. Any district attorney  
13 receiving funds pursuant to this subdivision shall first agree that  
14 the funds shall be used solely for investigating and prosecuting  
15 those cases of workers' compensation fraud or claims relating to  
16 the willful failure to secure the payment of workers'  
17 compensation that are redirected pursuant to this subdivision and  
18 submit an annual report to the commissioner with respect to the  
19 success of the district attorney's efforts. The commissioner shall  
20 keep the Fraud Assessment Commission fully informed of all  
21 reallocations of funds under this paragraph.

22 (2) If the commissioner determines that no district attorney is  
23 willing or able to investigate and prosecute the workers'  
24 compensation fraud claims or claims relating to the willful failure  
25 to secure the payment of workers' compensation arising in the  
26 nonparticipating county, the commissioner, with the advice and  
27 consent of the Fraud Assessment Commission, may award to the  
28 Attorney General some or all of the funds previously awarded to  
29 the nonparticipating county. Before the commissioner may award  
30 any funds, the Attorney General shall submit to the  
31 commissioner an application setting forth in detail his or her  
32 proposed use of any funds provided and agreeing that any funds  
33 awarded shall be used solely for investigating and prosecuting  
34 those cases of workers' compensation fraud or claims relating to  
35 the willful failure to secure the payment of workers'  
36 compensation that are redirected pursuant to this subdivision.  
37 The Attorney General shall submit an annual report to the  
38 commissioner with respect to the success of the fraud prosecution  
39 efforts of his or her office.

(3) Neither the Attorney General nor any district attorney shall be required to relinquish control of any investigation or prosecution undertaken pursuant to this subdivision unless the commissioner determines that satisfactory progress is no longer being made on the case or the case has been abandoned.

(4) A county that has become a nonparticipating county due to the inability or unwillingness of its district attorney to investigate and prosecute workers' compensation fraud or the willful failure to secure the payment of workers' compensation shall not become eligible to receive funding under this section until it has submitted a new application that meets the requirements of subdivision (d) and the applicable regulations.

(f) If in any fiscal year the Bureau of Fraudulent Claims does not use all of the funds made available to it under subdivision (d), any remaining funds may be distributed to district attorneys pursuant to a determination by the commissioner in accordance with the same procedures set forth in subdivision (d).

(g) The commissioner shall adopt rules and regulations to implement this section in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Included in the rules and regulations shall be the criteria for redistributing funds to district attorneys and the Attorney General. The adoption of the rules and regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(h) The department shall report on an annual basis to the Legislature and the Fraud Assessment Commission on the activities of the Bureau of Fraudulent Claims and district attorneys supported by the funds provided by this section.

The annual report shall include, but is not limited to, all of the following information for the department and each district attorney's office:

(1) All allocations, distributions, and expenditures of funds.

(2) The number of search warrants issued.

(3) The number of arrests and prosecutions, and the aggregate number of parties involved in each.

(4) The number of convictions and the names of all convicted fraud perpetrators.

1 (5) The estimated value of all assets frozen, penalties assessed,  
2 and restitutions made for each conviction.

3 (6) Any additional items necessary to fully inform the Fraud  
4 Assessment Commission and the Legislature of the  
5 fraud-fighting efforts financed through this section.

6 (i) In order to meet the requirements of subdivision (g), the  
7 department shall submit a biannual information request to those  
8 district attorneys who have applied for and received funding  
9 through the annual assessment process under this section.

10 (j) Assessments levied or collected to fight workers'  
11 compensation fraud and insurance fraud are not taxes. Those  
12 funds are entrusted to the state to fight fraud and the willful  
13 failure to secure the payment of workers' compensation by  
14 funding state and local investigation and prosecution efforts.  
15 Accordingly, any funds resulting from assessments, fees,  
16 penalties, fines, restitution, or recovery of costs of investigation  
17 and prosecution deposited in the Insurance Fund shall not be  
18 deemed "unexpended" funds for any purpose and, if remaining in  
19 that account at the end of any fiscal year, shall be applied as  
20 provided in subdivision (f) and to offset or augment subsequent  
21 years' program funding.

22 (k) The Bureau of State Audits shall evaluate the effectiveness  
23 of the efforts of the Fraud Assessment Commission, the Bureau  
24 of Fraudulent Claims, the Department of Insurance, and the  
25 Department of Industrial Relations, as well as local law  
26 enforcement agencies, including district attorneys, in identifying,  
27 investigating, and prosecuting workers' compensation fraud and  
28 the willful failure to secure payment of workers' compensation.  
29 The report shall specifically identify areas of deficiencies.  
30 Included in this report shall be recommendations on whether the  
31 current program provides the appropriate levels of accountability  
32 for those responsible for the allocation and expenditure of funds  
33 raised from the assessment provided in this section. The Bureau  
34 of State Audits shall submit a report to the Chairperson of the  
35 Senate Committee on Labor and Industrial Relations and the  
36 Chairperson of the Assembly Committee on Insurance on or  
37 before May 1, 2004.

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**All matter omitted in this version of the bill  
appears in the bill as amended in Assembly,  
05/02/05.**

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